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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,753	08/08/2006	Jonathan Cebon	029860-0145	3988

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EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the Examiner has determined is reasonably necessary to the examination of this application.

The Cebon *et al* reference (Proc. Amer. Soc. Clin. Oncol. 21, 6/02, abstract 86 and presentation slides), of record in the last Office Action mailed 2/3/10, has among its authors, Cebon, Davis, Chen and Green, who are also inventors of the instant application.

The teaching of the said Cebon *et al* reference with regard to *in vivo* administration of the NY-ESO-1 ISCOM composition appears to be the same as the disclosure in Applicant's specification.

In the biological sciences it is customary for scientists to present their work to others at meetings with an abstract of the material present on the poster being bound and published for dissemination to scientists who could not attend the meeting in person, or in an abstract and slides being presented at the meeting. As such, the poster or slide presentation at the meeting comprises more data than what can be contained in an abstract and/or copies of the slides. Applicant is reminded that as per MPEP 2128.01:

> **>IV. PUBLICLY DISPLAYED DOCUMENTS CAN CONSTITUTE A "PRINTED PUBLICATION" EVEN IF THE DURATION OF DISPLAY IS FOR ONLY A FEW DAYS AND THE DOCUMENTS ARE NOT DISSEMINATED BY COPIES OR INDEXED IN A LIBRARY OR DATABASE**
>
> A publicly displayed document where persons of ordinary skill in the art could see it and are not precluded from copying it can constitute a "printed publication," even if it is not disseminated by the distribution of reproductions or copies and/or indexed in a library or database. As stated in *In re Klopfenstein*, 380 F.3d 1345, 1348, 72 USPQ2d 1117, 1119 (Fed. Cir. 2004), "the key inquiry is whether or not a reference has been made 'publicly accessible.'" Prior to the critical date, a fourteen-slide presentation disclosing the invention was printed and pasted onto poster boards. The printed slide presentation was displayed with no confidentiality restrictions for approximately three cumulative days at two different industry events. 380 F.3d at 1347, 72 USPQ2d at 1118. The court noted that "an entirely oral presentation that includes neither slides nor copies of the presentation is without question not a 'printed publication' for the purposes of 35 U.S.C. § 102(b). Furthermore, a presentation that includes a transient display of slides is likewise not necessarily a 'printed publication.'" 380 F.3d at 1349 n.4, 72 USPQ2d at 1122 n.4. In resolving whether or not a temporarily displayed reference that was neither distributed nor indexed was nonetheless made sufficiently publicly accessible to count as a "printed publication" under 35 U.S.C. 102(b), the court considered the following factors: "the length of time the display was exhibited, the expertise of the target audience, the existence (or lack thereof) of reasonable expectations that the material displayed would not be copied, and the simplicity or ease with which the material displayed could have been copied." 380 F.3d at 1350, 72 USPQ2d at 1120. Upon reviewing the above factors, the court concluded that the display "was sufficiently publicly accessible to count as a 'printed publication.'" 380 F.3d at 1352, 72 USPQ2d at 1121.<

Thus, to comply with the request for information under 37 CFR 1.105, Applicant is requested to provide:

- A statement describing the amount of ISCOM adjuvant in each of the different protein dosage administrations, *i.e.*, for 10 ug, 30 ug and 100 ug of NY-ESO-1.
- A statement describing if reducing the risk of relapse was presented/discussed during the slide presentation.
- A statement describing all of the data that was presented and how that data is related to the data of the instant specification.
- In response to this request, Applicant is also requested to furnish:
- A statement describing additional presentations and/or abstracts presented by Applicant at scientific meetings wherein data pertinent to the subject matter was disclosed, and the contents of such disclosures, if such disclosures in fact occurred.

Note that compliance with the above requests cannot reasonably be considered burdensome since the inventors were either present at, or aware of, any disclosures of the instant claimed subject mater at scientific meetings and events prior to the filing of the instant application.

The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained may be accepted as a complete reply to the requirement for that item.

This requirement is an attachment of the enclosed Advisory Action. The time period for reply to this requirement coincides with the time period for reply to the enclosed Final Office Action mailed 2/3/10.

/Ram R. Shukla/
Supervisory Patent Examiner, Art Unit 1644